

9-8-2016

State v. Hayes Respondent's Brief Dckt. 43966

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Hayes Respondent's Brief Dckt. 43966" (2016). *Not Reported*. 3148.
https://digitalcommons.law.uidaho.edu/not_reported/3148

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43966
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-6991
)	
SCOTT GREGORY HAYES,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hayes failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with two years fixed, upon his guilty plea to attempted rape?

Hayes Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Forty-seven-year-old Hayes encountered 15-year-old K.M. while she was “walking in a neighborhood” in the middle of the night, “looking for some friends.” (PSI,

p.8.¹) K.M. asked Hayes “if he had seen her friends, and he told her he knew where they were.” (PSI, p.8.) Shortly after K.M. began walking with Hayes, he “grabbed her by the upper arms and shoved her to the ground and held her hands above her head, pinning her to the ground, then pulling her shorts down and penetrating her vagina with his penis.” (PSI, p.8.) K.M. “tried to fight him off by kicking and thrashing and he placed his hand over her mouth because she was screaming for him to stop.” (PSI, p.8.) Hayes was not wearing a condom and he ejaculated “both in her and all over her stomach,” then told her to get up and pull her pants up. (PSI, pp.8, 168.) K.M. “thought [Hayes] was going to kill her afterwards because she couldn’t imagine someone would do that to her and let her live to tell the story”; however, Hayes subsequently walked away and K.M. ran to her friend’s home. (PSI, pp.167-68.) K.M. reported the rape and underwent a sexual assault exam; medical staff discovered Hayes’ semen on K.M.’s abdomen and vaginal area. (PSI, pp.228, 238.) K.M. also had abrasions on her knees, “mid-back,” and inner thigh[s]; lacerations in her genital area; and bruising on her inner thighs, knees, and biceps that was “consistent with being grabbed.” (1/11/16 Tr., p.27, L.16 – p.28, L.5; PSI, pp.8, 171, 173, 206, 222-24.)

A grand jury indicted Hayes on one count of lewd conduct with a minor under 16 and one count of sexual abuse of a child under the age of 16 years. (R., pp.14-16.) Pursuant to a plea agreement, Hayes pled guilty to an amended charge of attempted rape. (R., pp.64-66.) The district court imposed a unified sentence of 15 years, with

¹ PSI page numbers correspond with the page numbers of the electronic file “HAYES 43966 psi.pdf.”

two years fixed. (R., pp.82-84.) Hayes filed a notice of appeal timely from the judgment of conviction. (R., pp.87-90.)

Hayes asserts his sentence is excessive in light of his alcohol abuse, support from his wife, “employability,” and “classifications as a low risk to reoffend.” (Appellant’s brief, pp.3-6.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for attempted rape is 15 years. I.C. § 18-306(1), -6101(1). The district court imposed a unified sentence of 15 years, with two years fixed, which falls well within the statutory guidelines. (R., pp.82-84.) At sentencing, the district court set forth in detail its reasons for imposing Hayes’ sentence. (1/11/16 Tr., p.43, L.2 – p.48, L.11.) The state submits that Hayes has failed to establish an abuse of

discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Hayes' conviction and sentence.

DATED this 8th day of September, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of September, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p style="text-align: center;">41</p> <p>1 We weren't there, Judge. I think what 2 is clear is that Mr. Hayes doesn't have a history 3 of criminal abuse. That there are conflicting 4 reports of what took place. And I would state 5 again that Mr. Hayes' version has always been 6 consistent based upon contact that doesn't amount 7 to penetration where somebody essentially admitted 8 to physical contact but no penetration and none 9 forced, I don't think a fixed portion is 10 warranted.</p> <p>11 Mr. Hayes is going to be placed on 12 probation. If this Court were to impose it, he 13 would have significant restrictions placed upon 14 him, not just curfew but treatment that he would 15 have to partake in. By all accounts and I know 16 one of the Court's consideration pursuant to the 17 Toohill factor is the danger to the community, he 18 comes back as a low risk on the psychosexual as 19 far as future harm goes.</p> <p>20 You know, I know there is some talk 21 within the PSI of a retained jurisdiction that he 22 could benefit from that. But I am going to ask 23 this Court to consider a period of probation. He 24 has lived a good life. His wife testified today. 25 They have been married 22 years. Been together</p>	<p style="text-align: center;">43</p> <p>1 MS. GUZMAN: None known by the State. 2 THE COURT: Well, as I said I often find the 3 police reports to be more useful parts of a 4 presentence report in part because the statements 5 made in the police reports tend to be much closer 6 to the event than much later and much more 7 considered statements that people tend to make to 8 presentence investigators.</p> <p>9 The victim in this case describes the 10 situation where she was forcibly raped. She is 11 15 years old. She has been drinking. She was 12 looking for her friends at about 2:00 in the 13 morning. The version that she provides is that 14 she was wandering around looking for her friends. 15 The defendant told her he knew where they were. 16 He led her to an isolated place where according to 17 her version she was raped.</p> <p>18 I will say that although there are 19 inconsistencies in her version and it does appear 20 from multiple witnesses that she had been drinking 21 and she was clearly vulnerable.</p> <p>22 What did strike me as I read through 23 the reports is that her behavior immediately after 24 the incident she describes is consistent with a 25 person who has been forcibly raped. She goes to a</p>
<p style="text-align: center;">42</p> <p>1 24. It appears that he has raised two good 2 children. They have good morals, good values. 3 And I'm not saying Mr. Hayes is the best husband. 4 Obviously, he cheated on his wife on the night in 5 question. I don't believe that there was any 6 information from the victim or from Mr. Hayes that 7 he thought this individual was under age. And 8 surely there is no information from Mr. Hayes that 9 he intended any force upon this individual, Judge.</p> <p>10 So based upon everything again and what 11 he pled to, the lack of criminal history, I am 12 going to ask this Court to consider a period of 13 probation.</p> <p>14 THE COURT: Mr. Hayes, your comments. 15 THE DEFENDANT: I'm remorseful and regretful 16 for what happened. Poor judgment on my part. 17 Clearly. Drinking alcohol is not different for me 18 than doing meth. I've been clean and sober since 19 2002. And I decided to the test waters. Bad 20 idea. I regret the situation sincerely. And I am 21 ready for your decision.</p> <p>22 THE COURT: Is there a legal cause why we 23 should not proceed? 24 MR. BUBLITZ: No, not from the Defense, 25 Judge.</p>	<p style="text-align: center;">44</p> <p>1 friend's house right away. She is crying. She is 2 upset. She says that she has been attacked. She 3 is taken to the hospital, to FACES, and she is 4 examined. She does have multiple bruises on her 5 back, arms and legs and genital area. It does 6 appear that she has been subjected to some level 7 of force.</p> <p>8 It is true that her version has 9 inconsistencies. It is also very true that the 10 defendant's version is quite inconsistent as well. 11 This is clearly a situation where the victim was 12 vulnerable.</p> <p>13 The defendant is 47 years old. He is 14 certainly a person who should be expected to 15 behave in a far better way. He doesn't have a 16 significant prior record at all. However, both 17 his half sister and his two -- I think they are 18 half brothers, report that the defendant was 19 removed from their home and institutionalized for 20 juvenile offenders for sexually abusing his half 21 sister and that's why he left the home. That 22 would indicate a lot earlier problems. That the 23 victim herself did speak with an investigator from 24 the prosecutor's office. She described being 25 eight years old. The defendant was 15. And he</p>

<p style="text-align: center;">45</p> <p>1 molested her. He did later apologize to her. He 2 did offer to pay for her counseling. 3 The family -- it does seem to me that 4 the negative feelings at that time were pretty 5 strong and they come across pretty strongly in the 6 letters. 7 The defendant had a prior charge for 8 criminal impersonation of a police officer. That 9 was a peculiar charge that didn't end up any place 10 in particular. But it is of concern that the 11 defendant is out there saying that he is doing a 12 neighborhood watch and what he did he was preyed 13 on a 15-year-old girl who was clearly quite 14 vulnerable. 15 What I am concerned about as I read the 16 defendant's version is that there doesn't appear 17 to be any empathy or understanding expressed at 18 all ever for the victim. There is some expression 19 today of the victim. The defendant is apparently 20 quickly identified because the young -- the man 21 that the victim spoke to also was aware. The 22 defendant referred to him as a meth head that he 23 knew. The more credible information seems to be 24 that he did have prior addiction when he was 25 younger. It is not clear what his current status</p>	<p style="text-align: center;">47</p> <p>1 The defendant says he is not 2 significantly under the influence. He knew he was 3 committing a crime. He significantly minimizes 4 the offense. And his prior record of sexual 5 misconduct. And it raises a real concern that the 6 defendant is not honest enough at this stage to 7 benefit from treatment. More importantly, he has 8 no true intention of changing directions in his 9 life. He harmed a vulnerable person. He 10 committed a serious offense. 11 And frankly, at this point I don't have 12 any -- I am not persuaded that he is in any state 13 to deal with it practically. I think that when a 14 person commits this kind of serious offense 15 against a person who is basically a stranger then 16 I think that the risk is pretty significant. And 17 frankly, it concerns me that he is roaming around 18 inebriated and pretending to be law enforcement 19 and offering to aid this inebriated 15-year-old 20 who he then takes advantage of. This raises way 21 more questions than it answers. 22 At this point because I don't have 23 any -- I am not persuaded that the defendant is 24 ready to change directions, that he accepts the 25 wrongfulness of his conduct, and frankly, I do</p>
<p style="text-align: center;">46</p> <p>1 is. 2 What is clear though is that he had sex 3 with a 15-year-old. He was 47 years old. She was 4 drinking. She was vulnerable. And the injuries 5 that she suffered are more consistent with an 6 attack than what the defendant in his second 7 version describes is consensual conduct. 8 When there is no empathy or 9 understanding expressed, when a defendant talks 10 about how he is not sure he needs sex offender 11 treatment, it becomes more concerning to the Court 12 because a person who has an understanding that 13 their conduct has caused harm is a person who is 14 more motivated to change the attitudes that led to 15 that conduct. A person who never acknowledges 16 wrongdoing and has no perception of the 17 wrongfulness of his conduct presents a more 18 significant risk of reoffense. 19 Moreover, this is a penalty for 20 violating the law. The purpose of the penalty is 21 first that it is fair to impose a penalty for 22 doing what one knows to be wrong, which is a 23 47-year-old having sex with a 15-year-old, is used 24 for a deterrent to future criminal conduct by the 25 person committing the act. This act was wrong.</p>	<p style="text-align: center;">48</p> <p>1 think that there needs to be a penalty for 2 committing a crime of this level of seriousness. 3 I am going to impose a sentence of 4 two years fixed followed by a 13 year 5 indeterminate for a 15 year sentence. At this 6 point not I am not retaining jurisdiction because 7 I am not persuaded that the defendant is prepared 8 to deal in any realistic manner with the 9 circumstances that led to this offense. And it is 10 a very serious offense. And even 15-year-olds who 11 get drunk are entitled to protection of the law. 12 So you do have 42 days in which to 13 appeal. I have signed the no contact order. I 14 think that's quite reasonable. I am not going to 15 impose any fine. I don't think that's productive. 16 You are remanded to custody. 17 MS. GUZMAN: Is the Court going to order the 18 amount of restitution for \$235? 19 THE COURT: For the rape kit? 20 MS. GUZMAN: I believe it is actually to the 21 mother. 22 THE COURT: If you can document it, yes. 23 Although I will give the Defense the additional 24 time to object to it. 25 MS. GUZMAN: May I approach, Your Honor?</p>